IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5187 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SHRI BABABHAI MANGABHAI THAKORE

Versus

SMT.MANIBA WD/O DEVISING HARISING

Appearance:

MR BB NAIK for Petitioners

MR JITENDRA M PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/07/97

ORAL JUDGEMENT

1. This petition has arisen under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, (hereinafter referred to as the Act, 1948) and dispute pertains to the land bearing Survey Nos.843/1, 844 and 621/1 situated at Moje Sathal, Tal. Dholka.

2. The petitioners are the legal heirs and representatives of deceased Mangaji Dholaji Thakore, who

was the tenant as per their case, of these lands. The petitioners submitted an application to the Agricultural Lands Tribunal and Mamlatdar, Dholka, under sec.32G of the Act, 1948, for declaration that they have become the deemed purchasers of the said lands and to fix the purchase price. After notice to the respondents-land owners, the A.L.T and Mamlatdar, Dholka, vide its order dated 21st January, 1979 decided the matter in favour of the petitioners and they have been declared to be deemed purchasers and fixed the purchase price of the said lands. The respondents preferred an appeal against the said order before the Dy. Collector (Appeals), Ahmedabad. The Dy. Collector under its order dated 23rd August, 1979, remanded the matter back to the A.L.T. and Mamlatdar, Dholka. The petitioners being aggrieved of the said order of remand made by the appellate authority preferred a revision application before the Gujarat Revenue Tribunal at Ahmedabad, but the same came to be dismissed under the order dated 24th August, 1980. After remand, the A.L.T. and Mamlatdar, Dholka, under its order dated 19th May, 1981, held that the petitioners have become deemed purchasers of the lands in question on 3-3-1973 and fixed the purchase price at Rs.5678/-. The respondents feeling aggrieved and dissatisfied with the said order preferred an appeal before the Dy. Collector (Appeals) Ahmedabad, which came to be allowed under the order dated 6-2-1982. The petitioners preferred a revision application against the said order of the appellate authority before the Gujarat Revenue Tribunal at Ahmedabad and the Tribunal under its order dated 20th September, 1983, dismissed the said application. Hence, this Special Civil Application.

3. The learned counsel for the petitioners challenging the correctness and the legality of the orders of the appellate authority and the Tribunal contended that both the authorities have committed a serious error apparent on the face of the order in holding that the previous proceedings initiated by the A.L.T. and Mamlatdar, Dholka, under sec.32-G of the Act, 1948, is res-judicata, and as such, the petitioners cannot raise and agitate the same point again. It has next been contended that though the proceedings have been initiated under sec.32-G of the Act, 1948, but still the A.L.T. and Mamlatdar, Dholka, could have gone into the question of the benefits to be given to the petitioners under sec.32(1B) of the Act, 1948. Admittedly, the predecessor-in-title of the petitioners was in possession of the land, as it transpires from the revenue record, upto 1955-56, and as such, the provisions of sec.32(1B) of the Act, 1948, are attracted in the present case. In

the proceedings which have been started on the application of a tenant under sec.32-G of the Act, 1948, the revenue authorities could have also proceeded under sec.32(1B) of the said Act. It has next been contended that a contradictory plea has been taken by the respondents. Before the Dy. Collector, and A.L.T. and Mamlatdar, Dholka, the respondents have come up with a case that they were cultivating the said lands from 1951 whereas before the Gujarat Revenue Tribunal it has been pleaded by them that they are cultivating the lands personally from 1956. It has been admitted by the respondent No.1 in the present proceedings that they are getting these lands in dispute cultivated by making a cash payment as labour charges to Shri Mangaji Dhulaji and after his demise to Shri Manibhai Mangabhai and Nagarbhai Mangabhai since 1951. So from these facts, it has come out that after the death of Mangaji Dholaji, his heirs were cultivating the said lands. To buttress this contention, the counsel for the petitioners further submitted that after 1951 the entries continue in the name of the tenant and the entries subsequent to 1951 have not been challenged by the respondents at any stage. Another contention has been made that in the revenue record, the predecessor of the petitioners Shri Mangaji Dhulaji Thakore was entered in the revenue record as protected permanent tenant and the same continued till the year 1955-56, but after 1955-56, the name of Mangaji Dholaji Thakore was deleted from the revenue record without any legal, valid and lawful order passed by the authority under the Tenancy Act. So, deletion of the name of the tenant is null and void. Shri Mangaji Dholaji Thakore in all circumstances was in possession of the lands on 15-6-1955 and after that date, the name of permanent tenant cannot be deleted or the tenancy of the permanent tenant cannot be terminated without obtaining the orders of the competent authority under the Act, 1948. Lastly, the counsel for the petitioners contended that the Dy. Collector and the Revenue Tribunal have committed serious illegality in placing reliance upon the entry made in the revenue record of the inheritance after the death of Mangaji Dholaji Thakore. The counsel for the petitioners contended that the name of deceased Mangaji Dhulaji was deleted from the revenue record after the year 1956 and therefore, the said entry of inheritance does not include the land in question and the same cannot be utilised against the petitioners.

4. On the other hand, the counsel for the respondents contended that both the authorities below have recorded a finding of fact, and as such, this Court sitting under Article 227 of the Constitution normally

should not interfere in the matter. It has next been contended that the plea regarding the reexamination of the rights of the petitioners with reference to the provisions of sec.32(1B) of the Act, 1948, the counsel for the respondents contended that this plea has not been raised by the petitioners either before the Dy. Collector or the Revenue Tribunal, and as such, this plea should not be allowed to be raised first time in the proceedings under Article 227 of the Constitution. The proceedings initiated under sec.32-G of the Act, 1948, earlier has been decided against the tenants, and as such, both the authorities have not committed any error in taking it to be a res-judicata on this question. The respondents are in possession of the lands for all these years, and as such, both the authorities have rightly decided the matter in their favour.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. The proceedings under sec.32-G of the Act, 1948, in case No.32G/Sathal/3525 in the Court of Mamlatdar and A.L.T. Dholka, were in respect of the old survey Nos. 844 and 845. So the lands of Survey Nos.621/1 and 843/1 were not the subject matter of any decision in those proceedings. Both the authorities below i.e. the Dy. Collector (Appeals), Ahmedabad, and the Gujarat Revenue Tribunal have lost the sight of this important fact that the said decision cannot be taken to be res-judicata in respect of the land of the aforesaid survey numbers. Otherwise also, this approach of both the authorities taking the decision given in the case No.32G/Sathal/3525 dated 8th August, 1978 to be res-judicata is wholly arbitrary. The petitioners who are undisputedly the legal heirs and representatives of deceased Mangaji Dholaji Thakore were not given any notice of those proceedings. The A.L.T. and Mamlatdar had given notice only to Manibhai Mangaji, but not to these petitioners. The matter would have been different where Mangaji Dhulaji would have been given the notice and this matter would have been decided during his lifetime. It is not in dispute that the Case No.32G/Sathal/3525 was started only after the death of Mangaji and in which only one legal heir and representative was given the notice. So, in this case, the authorities below have committed an illegality in holding that the petitioners are claiming their right through Mangaji Dhulaji, and as such, the decision given in the aforesaid case is res-judicata. The whole approach of the two authorities below on the issue of res-judicata of the earlier decision in the present proceedings is perverse. The petitioners were

not claiming through Manibhai Mangaji who was the only party to those proceedings. They have their independent right and in inheritance entry they have been shown to be legal heirs and representatives. The notice of those proceedings were admittedly not given to the petitioners, and as such, that proceedings and the decision given therein cannot be taken to be a res-judicata. This point has heavily prevailed with the authorities below i.e. the Dy. Collector (Appeals) and the Revenue Tribunal, and as such, the matter deserves to be sent back to the appellate authority to consider the matter afresh after excluding this question from consideration. It is true that other points were also taken, but it is this one point which heavily prevailed with the authorities below, and as such, the matter has to be considered afresh.

7. In view of this fact, I do not consider it to be appropriate to decide other contentions raised by the counsel for the parties in this Special Civil Application. However, it is made clear that the appellate authority shall decide the matter afresh and it shall be open to both the parties to raise all the objections, grounds and contentions available to them in the matter including the contentions made and raised before this Court.

8. In the result, this Special Civil Application succeeds and the order of the Gujarat Revenue Tribunal dated 20th September, 1983, made in revision application No.T.E.N./B.A./70/82 and that of the Dy. Collector (Appeals), Ahmedabad, in Appeal No.119/81 dated 6-2-1982 are quashed and set aside and the matter is sent back to the Dy. Collector (Appeals), Ahmedabad, with a direction to restore the Appeal No.119/81 to its original number and decide the same afresh in accordance with law and in the light of the observations made in this judgment. Rule is made absolute in the aforesaid terms with no order as to costs.

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